

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TERRY JOHNSON,)	8:08CV135
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
RYAN MHUR, EDWARD FABIN,)	
RICK VANGERPEN, MARTIN)	
TOMICH, KATHY MARSH, RICK)	
MCNEESE, Dr., ROBERT)	
HOUSTON, and UNKNOWN)	
HOPKINS,)	
)	
Defendants.)	

This matter is before the court on its own motion. On July 1, 2008, the court dismissed Plaintiff's Complaint without prejudice for failure to state a claim upon which relief may be granted. ([Filing Nos. 10](#) and [11](#).) On July 9, 2008, Plaintiff filed a Notice of Appeal of the court's Judgment. ([Filing No. 12](#).) However, Plaintiff did not submit the appellate filing fee of \$455.00, nor did he submit a motion to proceed in forma pauperis ("IFP"). ([Filing No. 13](#).) Plaintiff is a prisoner.

Pursuant to the Prison Litigation Reform Act ("PLRA"), an incarcerated civil appellant is required to pay the full amount of the \$455.00 filing fee by making monthly payments to the court, even if he or she is proceeding in forma pauperis. [28 U.S.C. § 1915\(b\)](#). Therefore, "[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceeding or over a period of time under an installment plan." [Henderson v. Norris, 129 F.3d 481, 483 \(8th Cir. 1997\)](#) (internal citations omitted).

Henderson established the following procedures for notifying pro se prisoners of their appellate filing fee obligations:

(1) When the district court notifies the prisoner ... in a civil action of its judgment, the court shall notify the prisoner that:

(a) the filing of a notice of appeal by the prisoner makes the prisoner liable for payment of the full \$[455] appellate filing fees regardless of the outcome of the appeal;

(b) by filing a notice of appeal the prisoner consents to the deduction of the [fees] from the prisoner's prison account by prison officials;

(c) the prisoner must submit to the clerk of the district court a certified copy of the prisoner's prison account for the last six months within 30 days of filing the notice of appeal; and

(d) failure to file the prison account information will result in the assessment of an initial appellate partial fee of \$35 or such other amount that is reasonable, based on whatever information the court has about the prisoner's finances.

[*Id.* at 483-84.](#)

Therefore, the court will permit Plaintiff additional time to consider the effect of filing a notice of appeal in this action in light of the foregoing notification. Plaintiff shall have 20 days in which to file a notice of withdrawal of appeal. In the event that Plaintiff does withdraw his appeal, he will not be responsible for the \$455.00 appellate filing fee. In the event that Plaintiff seeks to proceed with his appeal, he shall submit to the Clerk of the court either the full \$455.00 appellate filing fee or a certified copy of his prison account for the last six months within 20 days of the date of this order. As set forth in *Henderson*, if Plaintiff does not timely submit the required prison account information, the court will assess "an initial appellate partial fee of \$35 or such other amount that is reasonable, based on whatever information the court has about the prisoner's finances." [*Henderson*, 129 F.3d at 484.](#)

IT IS THEREFORE ORDERED that:

1. Plaintiff shall have until August 8, 2008 in which to file a notice of withdrawal of appeal in this matter. If Plaintiff does file a notice of withdrawal of appeal, he will not be responsible for the \$455.00 appellate filing fee and the appeal will not proceed.

2. In the event that Plaintiff seeks to proceed with his appeal, he shall submit to the Clerk of the court either the full \$455.00 appellate filing fee or a certified copy of his prison account for the last six months no later than August 8, 2008.

3. If Plaintiff does not timely submit the required prison account information, the court will assess an initial appellate partial fee of \$35 or such other amount that is reasonable, based on whatever information the court has about the prisoner's finances.

4. The Clerk of the court shall not process the appeal in this matter pending further order of the court.

5. The Clerk of the court is directed to set a pro se case management deadline with the following text: August 8, 2008: deadline for Plaintiff to file notice of withdrawal of appeal.

July 18, 2008.

BY THE COURT:

s/Richard G. Kopf
United States District Judge